IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO: 22959 of 2004

Between:

Smt.Ch.Sanyasamma W/o.Late Ch.P.P.Naidu
D.No.43-3-41, Railway New Colony Visakhapatnam.

... PETITIONER

AND

The Municipal Commissioner Municipal Corporation of Visakhapatnam
Municipal Corporation Buildings Visakhapatnam.

...RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of writ of Mandamus declaring the action of the respondents in interfering with structures of the building of petitioner as highly arbitrary, illegal and violation of Art 14 of Constitution of India and consequentially direct the respondent to consider and dispose of the explanation dt.9.3.2004 and 1.12.2004 of the Petitioner, in respect of the building of the Petitioner situated at D.No.43-3-17, T.S.No.Ward No.32, Railway new Colony, Visakhapatnam.

Counsel for the Petitioner: MR.T.M.K.CHAITANYA

Counsel for the Respondents: MR.T.S.VENKATARAMANA

The Court, at the admission stage, made the following:

ORDER:

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent. Both expressed no objection for disposal of the writ petition at the admission stage.

2. This writ petition is filed seeking a Writ of Mandamus declaring the action on the respondent in resorting to demolish the building in spite of submission of explanations dated 09-03-2004 and 01-12-2004 as illegal and consequently direct the respondent to consider and dispose of the said explanations submitted by the petitioner, in respect of building of the petitioner situated at 43-3-17, T.S.No.32, Railway Colony, Visakhapatnam.

3. The facts in brief, are that petitioner, who obtained construction permission from the respondent-Corporation through B.A.No.2003-ba-11670/ACP-III/G5 dated 18-12-2003, was served with a notice dated 03-03-2004, wherein it was stated that the petitioner commenced the construction work without issuing the commencement of work notice as required under Section 440 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') which is also applicable to VUDA and accordingly she was called upon to explain as to why action should not be taken against her. To the same, the petitioner submitted her explanations on 09-03-2004 and 01-12-2004. In spite of submission of the said explanations submitted by the petitioner, the respondent is trying to demolish the construction of the said building without serving any notice under Section 636 of the Act.

4. Learned counsel for the petitioner submitted that only after the Corporation comes to the conclusion that the construction is in violation of the statutory provisions, notice as contemplated under Section 636 of the Act has to be issued and then take necessary action.

5. Having regard to the facts and circumstances of the case, the respondent is directed not to demolish the disputed construction that was already made, without issuing notice as contemplated under Section 636 of the Act. If any such notice is issued, the respondent shall give some reasonable time to the petitioner to approach the competent Civil Court and the said notice shall not be implemented for a period of four weeks from the date of service on the petitioner so as to enable the petitioner to avail appropriate remedies.

With the above observations, the writ petition is disposed of at the admission stage.

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N. V. RAMANA, J

December 10, 2004

MRR / TVK

To:

1. The Municipal Commissioner Municipal Corporation of Visakhapatnam Municipal Corporation Buildings Visakhapatnam.

2. Two C.D. Copies.